

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

MELODEE H. and JON H. on) CIVIL NO. 07-00256 HG-LEK
behalf of their son Kelii H.,)
)
Plaintiffs,)
)
vs.)
)
DEPARTMENT OF EDUCATION,)
STATE OF HAWAII,)
)
Defendants.)
)

**AMENDMENT TO REPORT OF SPECIAL MASTER ON PLAINTIFFS'
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND COSTS**

On September 23, 2008, this Court filed its Report of Special Master on Plaintiffs' Motion for an Award of Attorneys' Fees and Costs ("Report"). This Court recommended that the district judge award Plaintiffs Melodee H. and Jon H. on behalf of their son Kelii H. (collectively "Plaintiffs") \$850.00 in costs for filings fees. The Court also found that Plaintiffs had not submitted sufficient information about their other requested costs and gave Plaintiffs leave to submit further documentation. On September 30, 2008, Plaintiffs submitted a Declaration of Stanley E. Levin regarding the Report, with supporting documents ("9/30/08 Declaration"). Defendant State of Hawaii Department of Education ("Defendant") did not submit a response to the 9/30/08 Declaration. After careful consideration of Plaintiffs' 9/30/08 Declaration and the relevant legal authority, this Court hereby

AMENDS the Report and RECOMMENDS that Plaintiffs' request for costs be GRANTED and that the district judge award Plaintiffs costs in the amount of \$1,304.68.

DISCUSSION

As the prevailing party, Plaintiffs are entitled to reasonable costs incurred in the relevant proceedings at issue in this instant case. See 20 U.S.C. § 1415(i)(3)(B)(i)(I). This Court found that Plaintiffs are entitled to reasonable costs incurred in Appeal 1, Appeal 2, the Due Process Hearing, and Appeal 3. [Report at 34.] Plaintiffs seek an award of the following costs incurred in those proceedings:

Appeal 1	filing fees	\$ 268.00
	sheriff fees	\$ 50.00
Appeal 2	filing fees	\$ 268.00
	sheriff fees	\$ 50.00
	messenger	\$ 7.50
	transcript	\$ 37.81
Appeal 3	filing fees	\$ 368.00
	sheriff fees	\$ 50.00
	Prof. Image	\$ 31.97 ¹ (149@.15 per pg=22.35; tabs/drilling 9.62)
	messenger	\$ 59.50 (7 court runs@8.50 ea.)
	photocopies	\$ 101.00 (1,010 pgs. @ .10 per pg)
	facsimile	\$ 10.40 (52 pgs.x .20 per pg)
	Total	\$1,302.18 ²

¹ The Court notes that Plaintiffs have chosen not to request the full amount of the Professional Image invoice. [Exh. C to 9/30/08 Decl. at 3.]

² Plaintiffs' original Motion for an Award of Attorneys' Fees and Costs sought \$1,689.92 in costs. Plaintiffs have, *inter alia*, excluded costs incurred in the Appeal 1 Fee Action.

[9/30/08 Decl. at ¶ 3-5.] Plaintiffs submitted supporting documents for each expense. [Exhs. A-C to 9/30/08 Decl.]

The Court finds that each type of expense was reasonable and necessary in these proceedings. The Court, however, notes that Plaintiffs' supporting documents indicate that counsel only made 987 copies in connection with Appeal 3. [Exh. C to 9/30/08 Decl. at 11-16.] The Court will therefore reduce Plaintiffs' request for copying costs to \$98.70 (987 pages @ .10 per page). The Court also notes that Plaintiffs' supporting documents indicate that counsel sent 76 facsimile pages in connection with Appeal 3. [Id. at 17-23.] The Court therefore finds that Plaintiffs are entitled to \$15.20 in facsimile expenses. The Court finds that Plaintiffs are entitled to an award of the following costs:

Appeal 1	filing fees	\$ 268.00
	sheriff fees	\$ 50.00
Appeal 2	filing fees	\$ 268.00
	sheriff fees	\$ 50.00
	messenger	\$ 7.50
	transcript	\$ 37.81
Appeal 3	filing fees	\$ 368.00
	sheriff fees	\$ 50.00
	Prof. Image	\$ 31.97 (149@.15 per pg=22.35; tabs/drilling 9.62)
	messenger	\$ 59.50 (7 court runs@8.50 ea.)
	photocopies	\$ 98.70 (987 pgs @ .10 per pg)
	facsimile	<u>\$ 15.20</u> (76 pgs x .20 per pg)
	Total	\$1,304.68

The Court RECOMMENDS that the district judge award Plaintiffs \$1,304.68 in costs.

CONCLUSION

On the basis of the foregoing, this Court hereby AMENDS its Report of Special Master on Plaintiffs' Motion for an Award of Attorneys' Fees and Costs, filed September 23, 2008, as follows: the Court RECOMMENDS that Plaintiffs' request for costs be GRANTED and that the district judge award Plaintiffs \$1,304.68 in costs.

The Court's recommendation with regard to the award of attorneys' fees remains unchanged.

IT IS SO FOUND AND RECOMMENDED.

DATED AT HONOLULU, HAWAII, October 7, 2008.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States Magistrate Judge

MELODEE H. AND JON H. ON BEHALF OF THEIR SON KELII H. V.
DEPARTMENT OF EDUCATION STATE OF HAWAII; CIVIL NO 07-00256 HG-
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FOR AN AWARD OR ATTORNEYS' FEES AND COSTS